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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,898	03/15/2004	Yuichi Yagawa	16869B-098200US	3352

20350 7590 12/19/2005

TOWNSEND AND TOWNSEND AND CREW, LLP  
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EXAMINER

LANE, JOHN A

ART UNIT PAPER NUMBER

2185

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,898	<b>Applicant(s)</b> YAGAWA, YUICHI	
	<b>Examiner</b> Jack A. Lane	<b>Art Unit</b> 2185	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) 35-50 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 and 8-32 is/are allowed.
- 6) ☒ Claim(s) 5-7, 33 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/15/04, 8/4/05(2)</u> | 6) <input type="checkbox"/> Other: _____  |

#### DETAILED ACTION

1. This Office action is responsive to the petition to make special filed 09/28/2005. Claims 1-50 are presented for examination. Claims 35-50 are withdrawn from further consideration. Affirmation of this election must be made by applicant in replying to this Office action. Claim 35-50 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### *Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-34, drawn to replicating partitions, classified in class 711, subclass 173.
  - II. Claims 35-50, drawn to corrupt partition/file recovery, classified in class 714, subclass 2+.

3. The inventions are distinct, each from the other because:

Inventions Group I and Group III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the invention of Group II has separate utility such as in a memory recovery system not based on partitions. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.

4. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The examiner requests, in response to this Office action, any documentation known to qualify as prior art under 35 U.S.C. sections 102 or 103 with respect to the invention as defined by the independent and dependent claims. That is, any prior art (including any documentation used to develop the disclosed/claimed subject matter, background art and any products for sale) similar to the claimed invention that could reasonably be used in a 102 or 103 rejection. This request does not require a search. Support for this request is derived from 37 C.F.R. 1.56 and 1.105, however, it is not intended to interfere with or go beyond that required under 37 C.F.R. 1.56 or 1.105.

In the present disclosure, the Background section identifies several prior art devices and/or systems. In response to this Office action, the examiner requests a discussion of which, if any, independent claim features (claims 1, 8, 18, 28, and 33) correspond to prior art elements in the background documentation (including the PCT documentation listed on the IDS filed 03/15/2004). Since applicant is most knowledgeable of the present invention and the background art, a discussion of the background art with respect to the instant claims is essential. That is, for each claim limitation identify a corresponding prior art element by page, line, and/or fig. The examiner is specifically looking for prior art features corresponding to any of the following independent claim elements. The following claim elements appear integral to the main invention(s)/embodiment(s):

A data object divisible into one or more partitions.

Producing one or more replicas (copies) of a partition if there are none.

Producing one or more replicas of a partition if the number of existing replicas is less than a threshold.

Additionally, the examiner requests a discussion of which, if any, presently claimed features (independent claims only) correspond to prior art elements in the IDS documentation filed 08/04/2005. Here again, the examiner is specifically looking for elements in the list above. The Petition to Make Special appears to state the features in the list above are not found in the IDS documentation, however further clarification is requested

The request may be fulfilled by asking the attorney(s) of record handling prosecution and the inventor(s)/assignee for references qualifying as prior art. A simple statement that the query has been made and no prior art found is sufficient to fulfill the request. Otherwise, the fee and certification requirements of 37 CFR section 1.97 are waived for those documents submitted in reply to this request. This waiver extends only to those documents within the scope of this request that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this request and any information disclosures beyond the scope of this request are subject to the fee and certification requirements of 37 CFR section 1.97.

In the event documentation (e.g. newly submitted/previously submitted on an IDS, incorporated by reference or "common knowledge" generally found in the background section but not a publication) is determined to qualify as prior art, a discussion of relevant passages, figs. etc. with respect to the claims must be provided. That is, for each **independent** claim limitation identify a corresponding prior art element by page, line and/or fig. Since applicant is most

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knowledgeable of the present invention and submitted art, a discussion of the reference(s) with respect to the instant claims is essential.

5. Claims 5-7, 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The dependency of claims 5-7 is unclear.

Claim 33, lines 2-3, "a file the storage system" is unclear.

6. Claims 1-34 appear to be allowable over the prior art of record.

**Any response to this action should be mailed to:**

Under Secretary of Commerce for Intellectual Property and Director  
of the United States Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

**or faxed to:**

(703) 872-9306, (for Official communications intended for entry)

**Or:**

(703) 872-9306, (for Non-Official or draft communications, please label  
"Non-Official" or "DRAFT")

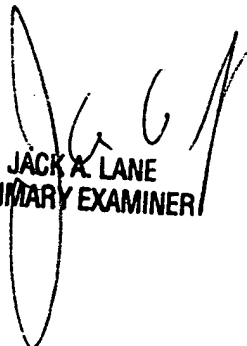
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack A. Lane whose telephone number is 571 272-4208. The examiner can normally be reached on Mon-Fri from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 571 272-4210. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571 272-2100

  
JACK A. LANE  
PRIMARY EXAMINER